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14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA

16 TRACY CHAPMAN,
17 Plaintiff,

18 vs.

19 ONIKA TANYA MARAJ p/k/a
20 NICKI MINAJ and DOES 1-10,
21 Defendants.

No. 2:18-cv-09088-VAP-SS

DISCOVERY MATTER

**JOINT STIPULATION REGARDING
PLAINTIFF'S MOTION TO COMPEL
DEFENDANT'S FURTHER
PRODUCTION OF DOCUMENTS**

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Pursuant to Rule 37 of the Federal Rules of Civil Procedure (the “Federal Rules”) and Local Rule 37-1 of the Local Rules of the Central District of California, Plaintiff Tracy Chapman (“Chapman”), on the one hand, and Defendant Onika Tanya Maraj p/k/a Nicki Minaj’s (“Maraj”), on the other hand, respectfully submit the following Joint Stipulation Regarding Plaintiff’s Motion to Compel Defendant’s Further Production of Documents (the “Joint Stipulation”). Although counsel for the parties did not meet and confer in person, the Parties submit this Joint Stipulation at the direction of the Court following the informal discovery conference held on October 7, 2019.

I. CHAPMAN’S INTRODUCTORY STATEMENT

When it comes to discovery, Maraj’s *modus operandi* is to ignore, delay, and avoid. As the Court is aware, Maraj first ignored Chapman’s interrogatories, requests for admission, requests for production (collectively, the “Requests”) and deposition notice for *months*. Then, Maraj delayed responding to the Requests, producing documents, or sitting for her deposition until she was ordered to do so by the Court after an informal discovery conference addressing her delay. (Dkt. 28) Following the order, Maraj produced only a minimal number of documents, including just one document that had her correspondence, and later belatedly acknowledged at her deposition that she had withheld from her production significant correspondence and other responsive documents that directly relate to Chapman’s copyright infringement claim, and the willfulness of Maraj’s wrongdoing. At each turn, Maraj’s discovery tactics have unfairly prejudiced Chapman by forcing her to spend time and money to seek redress for Maraj’s misconduct, and by depriving Chapman of the discovery to which she is entitled to prove her claims. Enough is enough. Maraj should not be permitted to continue to avoid her discovery obligations, and should be compelled to produce the documents

discussed below.¹

Specifically, in her latest effort to preclude Chapman from the discovery to which she is entitled, Maraj refuses to produce (i) her text messages with and a draft declaration sent to third-party Aston George Taylor, Jr. p/k/a Funkmaster Flex (“Taylor”) (the “Taylor Documents”); and (ii) discoverable and responsive documents and correspondence maintained by her former manager, Gerald “Gee” Roberson (“Roberson”), or the company for which he works, Blueprint Group, LLC (the “Roberson Documents”) (collectively with the Taylor Documents, the “Disputed Documents”).² (Gierl Decl. ¶¶ 16-17) As a result of Maraj’s failure to produce the Disputed Documents, Chapman had no choice but to seek again the Court’s intervention via an informal discovery conference – the second such conference Chapman has been forced to request. (Dkts. 25, 31) During the conference, Maraj requested and received an additional week to consider whether to produce some or all of the Disputed Documents (Gierl Decl. ¶ 16), but ultimately chose not to produce *any* of them. (*Id.* ¶ 17) As discussed during the latest conference, Maraj continues to rely on novel – and wholly inapplicable – legal theories to excuse her ongoing refusal to produce the Disputed Documents. Maraj’s arguments go nowhere.

First, Maraj should be compelled to produce the Taylor Documents because no objection, privilege or other doctrine excuses their production, and even if they did, any such protection has been waived. Nevertheless, Maraj attempts to justify her refusal to produce the Taylor Documents on the theory that the work product doctrine purportedly protects their disclosure. Not so. Although Maraj failed to

¹ Notwithstanding the then-impending November 30, 2019 discovery cutoff (Dkt. 18) and the knowledge concerning the prejudice caused by this discovery dispute, Maraj opposed Chapman’s request for a brief four-month extension of all case deadlines. (Dkts. 34-35) The Court ultimately granted, in part, Chapman’s request, and extended all deadlines by three months. (Dkt. 36)

² Based on these and other admissions, Chapman’s counsel left Maraj’s deposition open. (Gierl Decl. ¶ 14)

1 produce a privilege log detailing the nature of the withheld Taylor Documents, to
 2 the extent any of them only address the underlying facts at issue, rather than legal
 3 advice or work product concerning those facts, those documents are, by definition,
 4 *not* work product. With respect to communications with Taylor, the draft
 5 declaration he was asked to sign, and any executed copy of the declaration, courts
 6 throughout the United States have held that these documents cannot be withheld
 7 based on the work product doctrine. The primary case on which Maraj relies to the
 8 contrary, *Schoenmann v. F.D.I.C.*, 7 F. Supp. 3d 1009 (N.D. Cal. 2014), is
 9 nonbinding and factually inapposite. In any event, even if *Schoenmann* were
 10 controlling here, and it is not, it nevertheless does not protect the Taylor Documents
 11 from production because Maraj and her counsel waived any potential work product
 12 protection when she testified openly about the contents of the documents at her
 13 deposition *without objection or invocation of the doctrine*. In fact, Maraj’s counsel
 14 went so far as to agree to produce the Taylor Documents before backtracking, and
 15 belatedly arguing that the work product doctrine protects their production. Further,
 16 unlike in *Schoenmann*, the Taylor Documents are not only relevant to this case, but
 17 Chapman has a substantial need for them that would outweigh any qualified work
 18 product protection. In particular, the Taylor Documents are crucial to determining
 19 whether Maraj violated Chapman’s copyright by distributing the Infringing Work to
 20 Taylor – a key element that goes directly to Chapman’s infringement claim, and the
 21 willfulness of Maraj’s wrongdoing. Accordingly, the Taylor Documents are not
 22 protected by the work product doctrine, and Maraj should be compelled to produce
 23 them.

24 *Second*, Maraj similarly should be compelled to produce the Roberson
 25 Documents because they were within her control and she had the right, and
 26 obligation, to produce them. Specifically, because the Roberson Documents were
 27 created during the time when Roberson managed Maraj and was her agent, she has
 28 a “legal right” to demand those documents and was obligated to produce them.

1 Notwithstanding her discovery obligations, she failed to produce – or even seek
 2 from Roberson – the documents. As a result of Maraj’s failure to produce the
 3 Roberson Documents (especially in advance of her deposition), Chapman has been
 4 unfairly prejudiced. Accordingly, this Court should order Maraj to produce the
 5 Roberson Documents immediately.

6 Accordingly, and as discussed in more detail in Section IV below, Maraj
 7 should be compelled to produce all of the Disputed Documents no later than 24
 8 hours following the Court’s ruling on Chapman’s motion to compel.

9 **II. MARAJ’S INTRODUCTORY STATEMENT**

10 The present motion constitutes an unfortunate waste of the parties’ and the
 11 Court’s resources. Chapman distorts the background of the dispute, falsely alleging
 12 that Maraj failed to timely respond to the requests for production—the sole
 13 discovery materials at issue herein. She then proceeds to argue that Maraj should
 14 be compelled to produce the Roberson Documents, which are not in her possession,
 15 and which are the substance of a currently pending third party subpoena to the
 16 relevant parties pursuant to a plan *suggested by the court for the specific purposes*
 17 *of obviating the need for this motion* at the October 7 informal discovery
 18 conference. Finally, she seeks to compel the production of materials that are
 19 protected under the work product doctrine’s fundamental, baseline principles, based
 20 on arguments that reflect a significant misunderstanding of the rule. Her motion
 21 should be denied in its entirety.

22 **III. DOCUMENT REQUESTS AT ISSUE**

23 The Chapman Requests at issue in this Joint Stipulation and Maraj’s original
 24 and supplemental responses thereto are set forth in this section. Unless otherwise
 25 noted, Maraj’s original responses and supplemental responses are identical. The
 26 subject of Chapman’s motion to compel generally addresses two issues. *First*,
 27 Chapman contends that Maraj had a duty, but failed, to produce documents and
 28 correspondence maintained by Roberson, and over which she had legal control.

1 *Second*, Chapman argues that Maraj had a duty, but failed, to produce text
 2 messages with and a draft declaration sent to Taylor. Each of the foregoing
 3 Requests addresses at least one of the two aforementioned categories of documents.
 4 Thus, for the convenience of the Court, the parties have not repeated the identical
 5 points and authorities after each set of Requests and responses, but rather have set
 6 forth their respective arguments in Sections IV and V below.

7 **Taylor Document Requests**

8 **REQUEST FOR PRODUCTION NO. 2:**

9 All Documents and Communications Concerning this Action.

10 **RESPONSE TO REQUEST FOR PRODUCTION NO. 2 and**

11 **SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 2:**

12 Maraj objects to this request on the grounds that it is vague and
 13 ambiguous, and calls for protected trade secrets and confidential and proprietary
 14 business information, as well as information protected by the attorney-client and
 15 attorney work-product privileges and by the constitutional right of privacy.
 16 Without waiving these objections, Maraj responds that inspection will be allowed as
 17 requested, and all documents or things in the requested category that are in the
 18 possession, custody, or control of Maraj and to which no objection is being made
 19 will be produced.

20 **REQUEST FOR PRODUCTION NO. 5:**

21 All Documents and Communications Concerning the Infringing Work.

22 **RESPONSE TO REQUEST FOR PRODUCTION NO. 5 and**

23 **SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 5:**

24 Maraj objects to this request on the grounds that it is vague, ambiguous, and
 25 overbroad, seeks information irrelevant to the present case and not calculated to
 26 lead to the discovery of admissible evidence, and calls for protected trade secrets
 27 and confidential and proprietary business information, as well as information
 28 protected by the attorney-client and attorney work-product privileges and by the

1 constitutional right of privacy. In addition, Maraj is not aware of any “Infringing
 2 Work.” Without waiving these objections, and assuming that the requested
 3 category relates to the musical composition and recording entitled “Sorry,” Maraj
 4 responds that inspection will be allowed as requested, and all documents or things
 5 in the requested category that are in the possession, custody, or control of Maraj
 6 and to which no objection is being made will be produced.

7 REQUEST FOR PRODUCTION NO. 10:

8 All Communications between You and Taylor Concerning the Infringing
 9 Work.

10 RESPONSE TO REQUEST FOR PRODUCTION NO. 10 and

11 SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 10:

12 Maraj objects to this request on the grounds that it is vague, ambiguous, and
 13 overbroad, seeks information irrelevant to the present case and not calculated to
 14 lead to the discovery of admissible evidence, and calls for protected trade secrets
 15 and confidential and proprietary business information. In addition, Maraj is not
 16 aware of any “Infringing Work.” Without waiving these objections, and assuming
 17 that the requested category relates to the musical composition and recording entitled
 18 “Sorry,” Maraj responds that inspection will be allowed as requested, and all
 19 documents or things in the requested category that are in the possession, custody, or
 20 control of Maraj and to which no objection is being made will be produced.

21 REQUEST FOR PRODUCTION NO. 16:

22 All Communications between You and Taylor Concerning the Composition.

23 RESPONSE TO REQUEST FOR PRODUCTION NO. 16 and

24 SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 16:

25 Maraj objects to this request on the grounds that it is vague, ambiguous, and
 26 overbroad, seeks information irrelevant to the present case and not calculated to
 27 lead to the discovery of admissible evidence, and calls for protected trade secrets
 28 and confidential and proprietary business information, as well as information

1 protected by the attorney-client and attorney work-product privileges and by the
 2 constitutional right of privacy. Without waiving these objections, Maraj responds
 3 that inspection will be allowed as requested, and all documents or things in the
 4 requested category that are in the possession, custody, or control of Maraj and to
 5 which no objection is being made will be produced.

6 REQUEST FOR PRODUCTION NO. 17:

7 All Communications between You and any other Person Concerning the
 8 Composition.

9 RESPONSE TO REQUEST FOR PRODUCTION NO. 17 and

10 SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 17:

11 Maraj objects to this request on the grounds that it is vague, ambiguous, and
 12 overbroad, seeks information irrelevant to the present case and not calculated to
 13 lead to the discovery of admissible evidence, and calls for protected trade secrets
 14 and confidential and proprietary business information, as well as information
 15 protected by the attorney-client and attorney work-product privileges and by the
 16 constitutional right of privacy. Without waiving these objections, Maraj responds
 17 that inspection will be allowed as requested, and all documents or things in the
 18 requested category that are in the possession, custody, or control of Maraj and to
 19 which no objection is being made will be produced.

20 REQUEST FOR PRODUCTION NO. 21:

21 All Communications between You and Taylor Concerning any potential legal
 22 defenses against any of Plaintiff's allegations in the Complaint.

23 RESPONSE TO REQUEST FOR PRODUCTION NO. 21 and

24 SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 21:

25 Maraj objects to this request on the grounds that it is vague, ambiguous, and
 26 overbroad, seeks information irrelevant to the present case and not calculated to
 27 lead to the discovery of admissible evidence, and calls for protected trade secrets
 28 and confidential and proprietary business information, as well as information

1 protected by the attorney-client and attorney work-product privileges and by the
 2 constitutional right of privacy. Without waiving these objections, Maraj responds
 3 that inspection will be allowed as requested, and all documents or things in the
 4 requested category that are in the possession, custody, or control of Maraj and to
 5 which no objection is being made will be produced.

6 REQUEST FOR PRODUCTION NO. 34:

7 All Documents and Communications Concerning Communications with any
 8 Person who currently has or who has ever had a copy of the Infringing Work.

9 RESPONSE TO REQUEST FOR PRODUCTION NO. 34 and

10 SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 34:

11 Maraj objects to this request on the grounds that it is vague, ambiguous, and
 12 overbroad, seeks information irrelevant to the present case and not calculated to
 13 lead to the discovery of admissible evidence, and calls for information protected by
 14 the attorney-client and attorney work-product privileges and by the constitutional
 15 right of privacy. In addition, Maraj is not aware of any “Infringing Work,” but
 16 notes that videos containing the sound recording entitled “Sorry” are publicly
 17 available on the internet.

18 REQUEST FOR PRODUCTION NO. 35:

19 All Documents and Communications Concerning the means by which Taylor
 20 obtained a copy of the Infringing Work.

21 RESPONSE TO REQUEST FOR PRODUCTION NO. 35 and

22 SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 35:

23 Maraj objects to this request on the grounds that it is vague, ambiguous, and
 24 overbroad, and seeks information protected by the attorney-client and attorney
 25 work-product privileges and by the constitutional right of privacy. In addition,
 26 Maraj is not aware of any “Infringing Work.” Without waiving these objections,
 27 and assuming that the requested category related to the musical composition and
 28

1 recording entitled “Sorry,” Maraj responds that she cannot comply with this request
2 because she is aware of no documents or communications responsive to it.

3 REQUEST FOR PRODUCTION NO. 37:

4 All Documents and Communications Concerning Taylor’s playing of the
5 Infringing Work on his radio show.

6 RESPONSE TO REQUEST FOR PRODUCTION NO. 37 and

7 SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 37:

8 Maraj objects to this request on the grounds that it is vague, ambiguous, and
9 overbroad, seeks information irrelevant to the present case and not calculated to
10 lead to the discovery of admissible evidence, and seeks information protected by
11 the attorney-client and attorney work-product privileges. In addition, Maraj is not
12 aware of any “Infringing Work.” Without waiving these objections, and assuming
13 that the requested category relates to the musical composition and recording entitled
14 “Sorry,” Maraj responds that inspection will be allowed as requested, and all
15 documents or things in the requested category that are in the possession, custody, or
16 control of Maraj and to which no objection is being made will be produced.

17 REQUEST FOR PRODUCTION NO. 59:

18 All Documents and Communications other than those requested above
19 Concerning Plaintiff’s claim of copyright infringement in connection with the
20 Infringing Work.

21 RESPONSE TO REQUEST FOR PRODUCTION NO. 59 and

22 SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 59:

23 Maraj objects to this request on the grounds that it is vague, ambiguous, and
24 overbroad, seeks information irrelevant to the present case and not calculated to
25 lead to the discovery of admissible evidence, and calls for protected trade secrets
26 and confidential and proprietary business information, as well as information
27 protected by the attorney-client and attorney work-product privileges and by the
28 constitutional right of privacy. In addition, Maraj is not aware of any “Infringing

1 Work.” Without waiving these objections, and assuming that the requested
 2 category relates to the musical composition and recording entitled “Sorry,” Maraj
 3 responds that inspection will be allowed as requested, and all documents or things
 4 in the requested category that are in the possession, custody, or control of Maraj
 5 and to which no objection is being made will be produced.

6 REQUEST FOR PRODUCTION NO. 64:

7 All Documents and Communications other than those requested above
 8 Concerning the Composition.

9 RESPONSE TO REQUEST FOR PRODUCTION NO. 64 and

10 SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 64:

11 Maraj objects to this request on the grounds that it is vague, ambiguous, and
 12 overbroad, seeks information irrelevant to the present case and not calculated to
 13 lead to the discovery of admissible evidence, and calls for protected trade secrets
 14 and confidential and proprietary business information, as well as information
 15 protected by the attorney-client and attorney work-produce privileges and by the
 16 constitutional right of privacy. Without waiving these objections, Maraj responds
 17 that inspection will be allowed as requested, and all documents or things in the
 18 requested category that are in the possession, custody, or control of Maraj and to
 19 which no objection is being made will be produced.

20 REQUEST FOR PRODUCTION NO. 65:

21 All Documents and Communications other than those requested above
 22 Concerning the Infringing Work.

23 RESPONSE TO REQUEST FOR PRODUCTION NO. 65 and

24 SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 65:

25 Maraj objects to this request on the grounds that it is vague, ambiguous, and
 26 overbroad, seeks information irrelevant to the present case and not calculated to
 27 lead to the discovery of admissible evidence, and calls for protected trade secrets
 28 and confidential and proprietary business information, as well as information

1 protected by the attorney-client and attorney work-product privileges and by the
 2 constitutional right of privacy. In addition, Maraj is not aware of any “Infringing
 3 Work.” Without waiving these objections, and assuming that the requested
 4 category relates to the musical composition and recording entitled “Sorry,” Maraj
 5 responds that inspection will be allowed as requested, and all documents or things
 6 in the requested category that are in the possession, custody, or control of Maraj
 7 and to which no objection is being made will be produced.

8 REQUEST FOR PRODUCTION NO. 66:

9 All Documents and Communications other than those requested above
 10 Concerning Plaintiff.

11 RESPONSE TO REQUEST FOR PRODUCTION NO. 66 and

12 SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 66:

13 Maraj objects to this request on the grounds that it is vague, ambiguous, and
 14 overbroad, seeks information irrelevant to the present case and not calculated to
 15 lead to the discovery of admissible evidence, and calls for information protected by
 16 the attorney-client and attorney work-product privileges and by the constitutional
 17 right of privacy. Without waiving these objections, Maraj responds that inspection
 18 will be allowed as requested, and all documents or things in the requested category
 19 that are in the possession, custody, or control of Maraj and to which no objection is
 20 being made will be produced.

21 REQUEST FOR PRODUCTION NO. 67:

22 All Documents and Communications other than those requested above that
 23 You intend to or may rely upon in this Action.

24 RESPONSE TO REQUEST FOR PRODUCTION NO. 67 and

25 SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 67:

26 Maraj objects to this request on the grounds that it is vague, ambiguous, and
 27 overbroad, and seeks information protected by the attorney-client and attorney
 28 work-product privileges and by the constitutional right of privacy. Without

1 waiving these objections, Maraj responds that inspection will be allowed as
 2 requested, and all documents or things in the requested category that are in the
 3 possession, custody, or control of Maraj and to which no objection is being made
 4 will be produced.

5 **Roberson Document Requests**

6 **REQUEST FOR PRODUCTION NO. 1:**

7 All Documents and Communications identified in Your Initial Disclosures.

8 **RESPONSE TO REQUEST FOR PRODUCTION NO. 1 and**

9 **SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 1:**

10 All documents or things in the requested category that are in the possession,
 11 custody, or control of Maraj will be produced.

12 **REQUEST FOR PRODUCTION NO. 2:**

13 All Documents and Communications Concerning this Action.

14 **RESPONSE TO REQUEST FOR PRODUCTION NO. 2 and**

15 **SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 2:**

16 Maraj objects to this request on the grounds that it is vague and
 17 ambiguous, and calls for protected trade secrets and confidential and proprietary
 18 business information, as well as information protected by the attorney-client and
 19 attorney work-product privileges and by the constitutional right of privacy.
 20 Without waiving these objections, Maraj responds that inspection will be allowed as
 21 requested, and all documents or things in the requested category that are in the
 22 possession, custody, or control of Maraj and to which no objection is being made
 23 will be produced.

24 **REQUEST FOR PRODUCTION NO. 3:**

25 All Documents and Communications Concerning Plaintiff.

26 **RESPONSE TO REQUEST FOR PRODUCTION NO. 3 and**

27 **SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 3:**

28 Maraj objects to this request on the grounds that it is vague, ambiguous,

1 and overbroad, seeks information irrelevant to the present case and not
 2 calculated to lead to the discovery of admissible evidence, and calls for
 3 protected trade secrets and confidential and proprietary business information,
 4 as well as information protected by the attorney-client and attorney work-
 5 product privileges and by the constitutional right of privacy. Without waiving
 6 these objections, Maraj responds that inspection will be allowed as requested,
 7 and all documents or things in the requested category that are in the
 8 possession, custody, or control of Maraj and to which no objection is being
 9 made will be produced.

10 REQUEST FOR PRODUCTION NO. 4:

11 All Documents and Communications Concerning the Composition.

12 RESPONSE TO REQUEST FOR PRODUCTION NO. 4 and

13 SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 4:

14 Maraj objects to this request on the grounds that it is vague, ambiguous,
 15 and overbroad, seeks information irrelevant to the present case and not calculated
 16 to lead to the discovery of admissible evidence, and calls for protected trade
 17 secrets and confidential and proprietary business information, as well as
 18 information protected by the attorney-client and attorney work-product privileges
 19 by the constitutional right of privacy. Without waiving these objections, Maraj
 20 responds that inspection be as requested, and documents or things the requested
 21 category that are in the possession, custody, or control of Maraj and to which no
 22 objection is being made will be produced.

23 REQUEST FOR PRODUCTION NO. 5:

24 All Documents and Communications Concerning the Infringing Work.

25 RESPONSE TO REQUEST FOR PRODUCTION NO. 5 and

26 SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 5:

27 Maraj objects to this request on the grounds that it is vague, ambiguous, and
 28 overbroad, seeks information irrelevant to the present case and not calculated to

1 lead to the discovery of admissible evidence, and calls for protected trade secrets
 2 and confidential and proprietary business information, as well as information
 3 protected by the attorney-client and attorney work-product privileges and by the
 4 constitutional right of privacy. In addition, Maraj is not aware of any “Infringing
 5 Work.” Without waiving these objections, and assuming that the requested
 6 category relates to the musical composition and recording entitled “Sorry,” Maraj
 7 responds that inspection will be allowed as requested, and all documents or things
 8 in the requested category that are in the possession, custody, or control of Maraj
 9 and to which no objection is being made will be produced.

10 REQUEST FOR PRODUCTION NO. 6:

11 All Communications between You and Roberson Concerning the Infringing
 12 Work.

13 RESPONSE TO REQUEST FOR PRODUCTION NO. 6 and

14 SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 6:

15 Maraj objects to this request on the grounds that it is vague, ambiguous, and
 16 overbroad, seeks information irrelevant to the present case and not calculated to
 17 lead to the discovery of admissible evidence, and calls for protected trade secrets
 18 and confidential and proprietary business information, as well as information
 19 protected by the attorney-client and attorney work-product privileges and by the
 20 constitutional right of privacy. In addition, Maraj is not aware of any “Infringing
 21 Work.” Without waiving these objections, and assuming that the requested
 22 category relates to the musical composition and recording entitled “Sorry,” Maraj
 23 responds that inspection will be allowed as requested, and all documents or things
 24 in the requested category that are in the possession, custody, or control of Maraj
 25 and to which no objection is being made will be produced.

26 REQUEST FOR PRODUCTION NO. 7:

27 All Communications between You and Mannis-Gardner Concerning the
 28 Infringing Work.

1 RESPONSE TO REQUEST FOR PRODUCTION NO. 7 and

2 SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 7:

3 Maraj objects to this request on the grounds that it is vague, ambiguous, and
 4 overbroad, seeks information irrelevant to the present case and not calculated to
 5 lead to the discovery of admissible evidence, and calls for protected trade secrets
 6 and confidential and proprietary business information. In addition, Maraj is not
 7 aware of any “Infringing Work.” Without waiving these objections, and assuming
 8 that the requested category relates to the musical composition and recording entitled
 9 “Sorry,” Maraj responds that inspection will be allowed as requested, and all
 10 documents or things in the requested category that are in the possession, custody, or
 11 control of Maraj and to which no objection is being made will be produced.

12 REQUEST FOR PRODUCTION NO. 8:

13 All Communications between You and Bittenbender Concerning the
 14 Infringing Work.

15 RESPONSE TO REQUEST FOR PRODUCTION NO. 8 and

16 SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 8:

17 Maraj objects to this request on the grounds that it is vague, ambiguous, and
 18 overbroad, seeks information irrelevant to the present case and not calculated to
 19 lead to the discovery of admissible evidence, and calls for protected trade secrets
 20 and confidential and proprietary business information, as well as information
 21 protected by the attorney-client and attorney work-product privileges and by the
 22 constitutional right of privacy. In addition, Maraj is not aware of any “Infringing
 23 Work.” Without waiving these objections, and assuming that the requested
 24 category relates to the musical composition and recording entitled “Sorry,” Maraj
 25 responds that inspection will be allowed as requested, and all documents or things
 26 in the requested category that are in the possession, custody, or control of Maraj
 27 and to which no objection is being made will be produced.

1 REQUEST FOR PRODUCTION NO. 9:

2 All Communications between You and Berkman Concerning the Infringing
3 Work.

4 RESPONSE TO REQUEST FOR PRODUCTION NO. 9 and

5 SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 9:

6 Maraj objects to this request on the grounds that it is vague, ambiguous, and
7 overbroad, seeks information irrelevant to the present case and not calculated to
8 lead to the discovery of admissible evidence, and calls for protected trade secrets
9 and confidential and proprietary business information, as well as information
10 protected by the attorney-client and attorney work-product privileges and by the
11 constitutional right of privacy. In addition, Maraj is not aware of any “Infringing
12 Work.” Without waiving these objections, and assuming that the requested
13 category relates to the musical composition and recording entitled “Sorry,” Maraj
14 responds that inspection will be allowed as requested, and all documents or things
15 in the requested category that are in the possession, custody, or control of Maraj
16 and to which no objection is being made will be produced.

17 REQUEST FOR PRODUCTION NO. 11:

18 All Communications between You and any other Person Concerning the
19 Composition.

20 RESPONSE TO REQUEST FOR PRODUCTION NO. 11 and

21 SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 11:

22 Maraj objects to this request on the grounds that it is vague, ambiguous, and
23 overbroad, seeks information irrelevant to the present case and not calculated to
24 lead to the discovery of admissible evidence, and calls for protected trade secrets
25 and confidential and proprietary business information, as well as information
26 protected by the attorney-client and attorney work-product privileges and by the
27 constitutional right of privacy. Without waiving these objections, Maraj responds
28 that inspection will be allowed as requested, and all documents or things in the

1 requested category that are in the possession, custody, or control of Maraj and to
 2 which no objection is being made will be produced.

3 REQUEST FOR PRODUCTION NO. 12:

4 All Communications between You and Roberson Concerning the
 5 Composition.

6 RESPONSE TO REQUEST FOR PRODUCTION NO. 12 and

7 SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 12:

8 Maraj objects to this request on the grounds that it is vague, ambiguous, and
 9 overbroad, seeks information irrelevant to the present case and not calculated to
 10 lead to the discovery of admissible evidence, and calls for protected trade secrets
 11 and confidential and proprietary business information, as well as information
 12 protected by the attorney-client and attorney work-product privileges and by the
 13 constitutional right of privacy. Without waiving these objections, Maraj responds
 14 that inspection will be allowed as requested, and all documents or things in the
 15 requested category that are in the possession, custody, or control of Maraj and to
 16 which no objection is being made will be produced.

17 REQUEST FOR PRODUCTION NO. 13:

18 All Communications between You and Mannis-Gardner Concerning the
 19 Composition.

20 RESPONSE TO REQUEST FOR PRODUCTION NO. 13 and

21 SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 13:

22 Maraj objects to this request on the grounds that it is vague, ambiguous, and
 23 overbroad, seeks information irrelevant to the present case and not calculated to
 24 lead to the discovery of admissible evidence, and calls for protected trade secrets
 25 and confidential and proprietary business information, as well as information
 26 protected by the attorney-client and attorney work-product privileges and by the
 27 constitutional right of privacy. Without waiving these objections, Maraj responds
 28 that inspection will be allowed as requested, and all documents or things in the

1 requested category that are in the possession, custody, or control of Maraj and to
 2 which no objection is being made will be produced.

3 REQUEST FOR PRODUCTION NO. 14:

4 All Communications between You and Bittenbender Concerning the
 5 Composition.

6 RESPONSE TO REQUEST FOR PRODUCTION NO. 14 and

7 SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 14:

8 Maraj objects to this request on the grounds that it is vague, ambiguous, and
 9 overbroad, seeks information irrelevant to the present case and not calculated to
 10 lead to the discovery of admissible evidence, and calls for protected trade secrets
 11 and confidential and proprietary business information, as well as information
 12 protected by the attorney-client and attorney work-product privileges and by the
 13 constitutional right of privacy. Without waiving these objections, Maraj responds
 14 that inspection will be allowed as requested, and all documents or things in the
 15 requested category that are in the possession, custody, or control of Maraj and to
 16 which no objection is being made will be produced.

17 REQUEST FOR PRODUCTION NO. 15:

18 All Communications between You and Berkman Concerning the
 19 Composition.

20 RESPONSE TO REQUEST FOR PRODUCTION NO. 15 and

21 SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 15:

22 Maraj objects to this request on the grounds that it is vague, ambiguous, and
 23 overbroad, seeks information irrelevant to the present case and not calculated to
 24 lead to the discovery of admissible evidence, and calls for protected trade secrets
 25 and confidential and proprietary business information, as well as information
 26 protected by the attorney-client and attorney work-product privileges and by the
 27 constitutional right of privacy. Without waiving these objections, Maraj responds
 28 that inspection will be allowed as requested, and all documents or things in the

1 requested category that are in the possession, custody, or control of Maraj and to
2 which no objection is being made will be produced.

3 REQUEST FOR PRODUCTION NO. 17:

4 All Communications between You and any other Person Concerning the
5 Composition.

6 RESPONSE TO REQUEST FOR PRODUCTION NO. 17 and

7 SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 17:

8 Maraj objects to this request on the grounds that it is vague, ambiguous, and
9 overbroad, seeks information irrelevant to the present case and not calculated to
10 lead to the discovery of admissible evidence, and calls for protected trade secrets
11 and confidential and proprietary business information, as well as information
12 protected by the attorney-client and attorney work-product privileges and by the
13 constitutional right of privacy. Without waiving these objections, Maraj responds
14 that inspection will be allowed as requested, and all documents or things in the
15 requested category that are in the possession, custody, or control of Maraj and to
16 which no objection is being made will be produced.

17 REQUEST FOR PRODUCTION NO. 22:

18 All Documents and Communications Concerning the Creation of the
19 Infringing Work, including, without limitation, all written compositions, sheet
20 music, lyric sheets, demo and other preparatory recordings, and final recordings.

21 RESPONSE TO REQUEST FOR PRODUCTION NO. 22 and

22 SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 22:

23 Maraj objects to this request on the grounds that it is vague, ambiguous, and
24 overbroad, seeks information irrelevant to the present case and not calculated to
25 lead to the discovery of admissible evidence, and calls for protected trade secrets
26 and confidential and proprietary business information, as well as information
27 protected by the attorney-client and attorney work-product privileges and by the
28 constitutional right of privacy. In addition, Maraj is not aware of any “Infringing

1 Work.” Without waiving these objections, and assuming that the requested
 2 category relates to the musical composition and recording entitled “Sorry,” Maraj
 3 responds that inspection will be allowed as requested, and all documents or things
 4 in the requested category that are in the possession, custody, or control of Maraj
 5 and to which no objection is being made will be produced.

6 REQUEST FOR PRODUCTION NO. 23:

7 All Documents and Communications Concerning the Creation of the
 8 Infringing Work other than those requested above.

9 RESPONSE TO REQUEST FOR PRODUCTION NO. 23 and

10 SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 23:

11 Maraj objects to this request on the grounds that it is vague, ambiguous, and
 12 overbroad, seeks information irrelevant to the present case and not calculated to
 13 lead to the discovery of admissible evidence, and calls for protected trade secrets
 14 and confidential and proprietary business information, as well as information
 15 protected by the attorney-client and attorney work-product privileges and by the
 16 constitutional right of privacy. In addition, Maraj is not aware of any “Infringing
 17 Work.” Without waiving these objections, and assuming that the requested
 18 category relates to the musical composition and recording entitled “Sorry,” Maraj
 19 responds that inspection will be allowed as requested, and all documents or things
 20 in the requested category that are in the possession, custody, or control of Maraj
 21 and to which no objection is being made will be produced.

22 REQUEST FOR PRODUCTION NO. 24:

23 All Communications between You and/or your representatives, on the one
 24 hand, and Plaintiff and/or Plaintiff’s representatives, on the other hand, Concerning
 25 the Creation of the Infringing Work.

26 RESPONSE TO REQUEST FOR PRODUCTION NO. 24 and

27 SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 24:

28

1 Maraj objects to this request on the grounds that it is vague and ambiguous.
2 Maraj is not aware of any “Infringing Work.” Without waiving these objections,
3 and assuming that the requested category relates to the musical composition and
4 recording entitled “Sorry,” Maraj responds that inspection will be allowed as
5 requested, and all documents or things in the requested category that are in the
6 possession, custody, or control of Maraj and to which no objection is being made
7 will be produced.

8 REQUEST FOR PRODUCTION NO. 25:

9 All Communications between You and/or your representatives, on the one
10 hand, and any Person other than Plaintiff and/or Plaintiff’s representatives, on the
11 other hand, Concerning the Creation of the Infringing Work.

12 RESPONSE TO REQUEST FOR PRODUCTION NO. 25 and

13 SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 25:

14 Maraj objects to this request on the grounds that it is vague, ambiguous, and
15 overbroad, seeks information irrelevant to the present case and not calculated to
16 lead to the discovery of admissible evidence, and calls for protected trade secrets
17 and confidential and proprietary business information, as well as information
18 protected by the attorney-client and attorney work-product privileges and by the
19 constitutional right of privacy. In addition, Maraj is not aware of any “Infringing
20 Work.” Without waiving these objections, and assuming that the requested
21 category relates to the musical composition and recording entitled “Sorry,” Maraj
22 responds that inspection will be allowed as requested, and all documents or things
23 in the requested category that are in the possession, custody, or control of Maraj
24 and to which no objection is being made will be produced.

25 REQUEST FOR PRODUCTION NO. 26:

26 All reference or inspiration materials that You considered, reviewed, or relied
27 on in creating the Infringing Work, including, without limitation, other musical
28 compositions and sound recordings.

1 RESPONSE TO REQUEST FOR PRODUCTION NO. 26 and

2 SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 26:

3 Maraj objects to this request on the grounds that it is vague and ambiguous.
 4 Maraj is not aware of any “Infringing Work.” Without waiving these objections,
 5 and assuming that the requested category relates to the musical composition and
 6 recording entitled “Sorry,” Maraj responds that inspection will be allowed as
 7 requested, and all documents or things in the requested category that are in the
 8 possession, custody, or control of Maraj and to which no objection is being made
 9 will be produced.

10 REQUEST FOR PRODUCTION NO. 27:

11 All Documents and Communications Concerning any discussions with
 12 Mannis-Gardner and/or representatives of DMG Clearances, Inc. Concerning the
 13 potential or requested Licensing of the Composition for use in the Infringing Work.

14 RESPONSE TO REQUEST FOR PRODUCTION NO. 27:

15 Maraj objects to this request on the grounds that it is vague, ambiguous, and
 16 overbroad, seeks information irrelevant to the present case and not calculated to
 17 lead to the discovery of admissible evidence, and calls for protected trade secrets
 18 and confidential and proprietary business information, as well as information
 19 protected by the attorney-client and attorney work-product privileges and by the
 20 constitutional right of privacy.

21 SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 27:

22 Maraj objects to this request on the grounds that it is vague, ambiguous, and
 23 overbroad, seeks information irrelevant to the present case and not calculated to
 24 lead to the discovery of admissible evidence, and calls for protected trade secrets
 25 and confidential and proprietary business information, as well as information
 26 protected by the attorney-client and attorney work-product privileges and by the
 27 constitutional right of privacy. In addition, Maraj is not aware of any “Infringing
 28 Work.” Without waiving these objections, and assuming that the requested

1 category relates to the musical composition and recording entitled “Sorry,” Maraj
 2 responds that inspection will be allowed as requested, and all documents or things
 3 in the requested category that are in the possession, custody, or control of Maraj to
 4 which no objection is being made will be produced.

5 REQUEST FOR PRODUCTION NO. 28:

6 All Documents and Communications Concerning any discussions with
 7 Plaintiff and/or Plaintiff’s representatives Concerning the potential or requested
 8 Licensing of the Composition for use in the Infringing Work.

9 RESPONSE TO REQUEST FOR PRODUCTION NO. 28 and

10 SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 28:

11 Maraj objects to this request on the grounds that it is vague, ambiguous, and
 12 overbroad, seeks information irrelevant to the present case and not calculated to
 13 lead to the discovery of admissible evidence, and calls for protected trade secrets
 14 and confidential and proprietary business information, as well as information
 15 protected by the attorney-client and attorney work-product privileges and by the
 16 constitutional right of privacy. In addition, Maraj is not aware of any “Infringing
 17 Work.” Without waiving these objections, and assuming that the requested
 18 category relates to the musical composition and recording entitled “Sorry,” Maraj
 19 responds that inspection will be allowed as requested, and all documents or things
 20 in the requested category that are in the possession, custody, or control of Maraj
 21 and to which no objection is being made will be produced.

22 REQUEST FOR PRODUCTION NO. 30:

23 All Documents and Communications Concerning any and all Licenses sought
 24 or obtained for the Infringing Work other than those requested above.

25 RESPONSE TO REQUEST FOR PRODUCTION NO. 30 and

26 SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 30:

27 Maraj objects to this request on the grounds that it is duplicative, vague,
 28 ambiguous, and overbroad, seeks information irrelevant to the present case and not

1 calculated to lead to the discovery of admissible evidence, and calls for protected
 2 trade secrets and confidential and proprietary business information, as well as
 3 information protected by the attorney-client and attorney work-product privileges
 4 and by the constitutional right of privacy. In addition, Maraj is not aware of any
 5 “Infringing Work.” Without waiving these objections, and assuming that the
 6 requested category relates to the musical composition and recording entitled
 7 “Sorry,” Maraj responds that inspection will be allowed as requested, and all
 8 documents or things in the requested category that are in the possession, custody, or
 9 control of Maraj and to which no objection is being made will be produced.

10 REQUEST FOR PRODUCTION NO. 31:

11 All Documents and Communications Concerning Plaintiff’s response(s) to
 12 requests to License her musical works, including the Composition.

13 RESPONSE TO REQUEST FOR PRODUCTION NO. 31 and

14 SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 31:

15 Maraj objects to this request on the grounds that it is vague, ambiguous, and
 16 overbroad, seeks information irrelevant to the present case and not calculated to
 17 lead to the discovery of admissible evidence, and calls for protected trade secrets
 18 and confidential and proprietary business information, as well as information
 19 protected by the attorney-client and attorney work-product privileges and by the
 20 constitutional right of privacy. Without waiving these objections, Maraj responds
 21 that inspection will be allowed as requested, and all documents or things in the
 22 requested category that are in the possession, custody, or control of Maraj and to
 23 which no objection is being made will be produced.

24 REQUEST FOR PRODUCTION NO. 33:

25 All Communications with Plaintiff and/or Plaintiff’s representatives.

26 RESPONSE TO REQUEST FOR PRODUCTION NO. 33 and

27 SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 33:

28

1 Maraj objects to this request on the grounds that it is vague, ambiguous, and
2 overbroad, and seeks information equally available to Plaintiff as to Maraj.

3 Without waiving these objections, Maraj responds that inspection will be allowed
4 as requested, and all documents or things in the requested category that are in the
5 possession, custody, or control of Maraj and to which no objection is being made
6 will be produced.

7 REQUEST FOR PRODUCTION NO. 39:

8 All Documents and Communications other than those requested above that
9 prove or disprove Your position that the Infringing Work does not infringe
10 Plaintiff's copyright in the Composition.

11 RESPONSE TO REQUEST FOR PRODUCTION NO. 39 and

12 SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 39:

13 Maraj objects to this request on the grounds that it is vague, ambiguous, and
14 overbroad, and calls for information protected by the attorney-client and attorney
15 work-product privileges and by the constitutional right of privacy. In addition,
16 Maraj is not aware of any "Infringing Work." Without waiving these objections,
17 and assuming that the requested category relates to the musical composition and
18 recording entitled "Sorry," Maraj responds that inspection will be allowed as
19 requested, and all documents or things in the requested category that are in the
20 possession, custody, or control of Maraj and to which no objection is being made
21 will be produced.

22 REQUEST FOR PRODUCTION NO. 58:

23 All Documents and Communications Concerning any comparisons of and/or
24 comments on the Composition and the Infringing Work.

25 RESPONSE TO REQUEST FOR PRODUCTION NO. 58 and

26 SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 58:

27 Maraj objects to this request on the grounds that it is vague, ambiguous, and
28 overbroad, and calls for information protected by the attorney-client and attorney

1 work-product privileges. In addition, Maraj is not aware of any “Infringing Work.”
 2 Without waiving these objections, and assuming that the requested category relates
 3 to the musical composition and recording entitled “Sorry,” Maraj responds that
 4 inspection will be allowed as requested, and all documents or things in the
 5 requested category that are in the possession, custody, or control of Maraj and to
 6 which no objection is being made will be produced.

7 REQUEST FOR PRODUCTION NO. 59:

8 All Documents and Communications other than those requested above
 9 Concerning Plaintiff’s claim of copyright infringement in connection with the
 10 Infringing Work.

11 RESPONSE TO REQUEST FOR PRODUCTION NO. 59 and

12 SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 59:

13 Maraj objects to this request on the grounds that it is vague, ambiguous, and
 14 overbroad, seeks information irrelevant to the present case and not calculated to
 15 lead to the discovery of admissible evidence, and calls for protected trade secrets
 16 and confidential and proprietary business information, as well as information
 17 protected by the attorney-client and attorney work-product privileges and by the
 18 constitutional right of privacy. In addition, Maraj is not aware of any “Infringing
 19 Work.” Without waiving these objections, and assuming that the requested
 20 category relates to the musical composition and recording entitled “Sorry,” Maraj
 21 responds that inspection will be allowed as requested, and all documents or things
 22 in the requested category that are in the possession, custody, or control of Maraj
 23 and to which no objection is being made will be produced.

24 REQUEST FOR PRODUCTION NO. 60:

25 All Documents and Communications referenced and/or cited in the Answer.

26 RESPONSE TO REQUEST FOR PRODUCTION NO. 60 and

27 SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 60:

28

1 Maraj objects to this request on the grounds that it is vague, ambiguous, and
 2 overbroad. Without waiving these objections, Maraj responds that inspection will
 3 be allowed as requested, and all documents or things in the requested category that
 4 are in the possession, custody, or control of Maraj and to which no objection is
 5 being made will be produced.

6 REQUEST FOR PRODUCTION NO. 61:

7 All Documents and Communications other than those requested above
 8 Concerning the defenses asserted in the Answer.

9 RESPONSE TO REQUEST FOR PRODUCTION NO. 61 and

10 SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 61:

11 Maraj objects to this request on the grounds that it is vague, ambiguous, and
 12 overbroad, and calls for information protected by the attorney-client and attorney
 13 work-product privileges. Without waiving these objections, Maraj responds that
 14 inspection will be allowed as requested, and all documents or things in the
 15 requested category that are in the possession, custody, or control of Maraj and to
 16 which no objection is being made will be produced.

17 REQUEST FOR PRODUCTION NO. 62:

18 A copy of Your recording of the Infringing Work.

19 RESPONSE TO REQUEST FOR PRODUCTION NO. 62 and

20 SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 62:

21 Maraj objects to this request on the grounds that it is vague, ambiguous, and
 22 overbroad. In addition, Maraj is not aware of any “Infringing Work.” Without
 23 waiving these objections, and assuming that the requested category relates to the
 24 musical composition and recording entitled “Sorry,” Maraj responds that inspection
 25 will be allowed as requested, and all documents or things in the requested category
 26 that are in the possession, custody, or control of Maraj and to which no objection is
 27 being made will be produced.

1 REQUEST FOR PRODUCTION NO. 63:

2 All underlying electronic and audio files used in the Creation of the recording
3 of the Infringing Work, including, without limitation, any ProTools or other music
4 software audio files.

5 RESPONSE TO REQUEST FOR PRODUCTION NO. 63 and

6 SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 63:

7 Maraj objects to this request on the grounds that it is vague, ambiguous, and
8 overbroad, and seeks information irrelevant to the present case and not calculated to
9 lead to the discovery of admissible evidence. In addition, Maraj is not aware of any
10 “Infringing Work.” Without waiving these objections, and assuming that the
11 requested category relates to the musical composition and recording entitled
12 “Sorry,” Maraj responds that inspection will be allowed as requested, and all
13 documents or things in the requested category that are in the possession, custody, or
14 control of Maraj and to which no objection is being made will be produced.

15 REQUEST FOR PRODUCTION NO. 64:

16 All Documents and Communications other than those requested above
17 Concerning the Composition.

18 RESPONSE TO REQUEST FOR PRODUCTION NO. 64 and

19 SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 64:

20 Maraj objects to this request on the grounds that it is vague, ambiguous, and
21 overbroad, seeks information irrelevant to the present case and not calculated to
22 lead to the discovery of admissible evidence, and calls for protected trade secrets
23 and confidential and proprietary business information, as well as information
24 protected by the attorney-client and attorney work-produce privileges and by the
25 constitutional right of privacy. Without waiving these objections, Maraj responds
26 that inspection will be allowed as requested, and all documents or things in the
27 requested category that are in the possession, custody, or control of Maraj and to
28 which no objection is being made will be produced.

1 REQUEST FOR PRODUCTION NO. 65:

2 All Documents and Communications other than those requested above
3 Concerning the Infringing Work.

4 RESPONSE TO REQUEST FOR PRODUCTION NO. 65 and

5 SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 65:

6 Maraj objects to this request on the grounds that it is vague, ambiguous, and
7 overbroad, seeks information irrelevant to the present case and not calculated to
8 lead to the discovery of admissible evidence, and calls for protected trade secrets
9 and confidential and proprietary business information, as well as information
10 protected by the attorney-client and attorney work-product privileges. In addition,
11 Maraj is not aware of any "Infringing Work." Without waiving these objections,
12 and assuming that the requested category relates to the musical composition and
13 recording entitled "Sorry," Maraj responds that inspection will be allowed as
14 requested, and all documents or things in the requested category that are in the
15 possession, custody, or control of Maraj and to which no objection is being made
16 will be produced.

17 REQUEST FOR PRODUCTION NO. 66:

18 All Documents and Communications other than those requested above
19 Concerning Plaintiff.

20 RESPONSE TO REQUEST FOR PRODUCTION NO. 66 and

21 SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 66:

22 Maraj objects to this request on the grounds that it is vague, ambiguous, and
23 overbroad, seeks information irrelevant to the present case and not calculated to
24 lead to the discovery of admissible evidence, and calls for information protected by
25 the attorney-client and attorney work-product privileges. Without waiving these
26 objections, Maraj responds that inspection will be allowed as requested, and all
27 documents or things in the requested category that are in the possession, custody, or
28 control of Maraj and to which no objection is being made will be produced.

1 REQUEST FOR PRODUCTION NO. 67:

2 All Documents and Communications other than those requested above that
3 You intend to or may rely upon in this Action.

4 RESPONSE TO REQUEST FOR PRODUCTION NO. 67 and

5 SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 67:

6 Maraj objects to this request on the grounds that it is vague, ambiguous, and
7 overbroad, and seeks information protected by the attorney-client and attorney
8 work-product privileges and by the constitutional right of privacy. Without
9 waiving these objections, Maraj responds that inspection will be allowed as
10 requested, and all documents or things in the requested category that are in the
11 possession, custody, or control of Maraj and to which no objection is being made
12 will be produced.

13 **IV. CHAPMAN'S POINTS AND AUTHORITIES**
14 **IN SUPPORT OF MOTION TO COMPEL**

15 **A. Relevant Factual and Procedural Background**

16 As this Court is aware, Chapman filed this copyright infringement action
17 against Maraj based on Maraj's willful infringement of Chapman's copyright in her
18 musical composition *Baby Can I Hold You* (the "Composition") when Maraj (i)
19 unlawfully recorded her infringing song *Sorry* (the "Infringing Work"); and (ii)
20 thereafter distributed the Infringing Work to third parties, including Taylor, to play
21 on the radio. (See Dkt. 1) Following the Court's issuance of the scheduling order
22 (the "Scheduling Order") (Dkt. 18), which set a November 30, 2019 discovery
23 cutoff, Chapman served the Requests.³ (Gierl Decl. ¶ 4) Before Maraj's responses
24 to the Requests were due, her counsel requested an extension of time to respond
25 until July 12, 2019. (*Id.* ¶ 5) According to Maraj's counsel, they had been unable
26 to get in touch with her for months, making them unable to respond to the
27

28 ³ The discovery cutoff has since been moved to February 24, 2020. (Dkt. 36)

1 Responses on her behalf. (*Id.* ¶ 7) On this basis, Chapman agreed to extend
 2 Maraj’s time to respond to the Requests until July 12, 2019. (*Id.* ¶ 5) In the
 3 meantime, on July 9, 2019, Chapman noticed Maraj’s deposition for August 12,
 4 2019. (*Id.* ¶ 6) When the date came due for Maraj’s responses to the Requests, she
 5 served only “preliminary responses” and objections, which did not include any
 6 substantive responses or documents. (*Id.* ¶ 7) As a result, Chapman was forced to
 7 incur significant legal fees in order to resolve the dispute concerning Maraj’s delays
 8 and failure to respond. (*See id.* ¶¶ 8-11) Following weeks-long meet and confer
 9 efforts, Chapman had no choice but to seek judicial intervention from the Court via
 10 an informal discovery conference. (Dkt. 26) As a result of that conference, which
 11 was held on August 19, 2019, Maraj was ordered to substantively respond in
 12 writing to the Requests by September 3, 2019; produce all responsive documents by
 13 September 6, 2019; and sit for her deposition on September 23, 2019. (Dkt. 28)

14 On September 6, 2019, more than three months after the Requests were
 15 propounded, Maraj produced only 37 pages of documents, only six pages of which
 16 included correspondence involving Maraj. (Gierl Decl. ¶ 13) Approximately two
 17 weeks later, Maraj sat for her deposition. (*Id.* ¶ 14) Through Maraj’s deposition
 18 testimony, Chapman learned that Maraj had failed to produce many requested
 19 documents, including, but not limited to, the Taylor Documents and Roberson
 20 Documents. (*Id.*) Based on these omissions, among several others, Chapman
 21 immediately sent a meet and confer letter to Maraj in an effort to expeditiously and
 22 informally resolve the dispute. (Gierl Decl. ¶ 15, Exh. D) With the exception of
 23 producing a handful of additional documents on October 3, 2019 (a week and a half
 24 *after* Maraj’s deposition), Maraj refused to produce the additional documents
 25 requested. (*Id.* ¶ 16) As a result, Chapman again had to resort to seeking judicial
 26 intervention from the Court via another informal discovery conference on October
 27 7, 2019. (Dkt. 32) During the second conference, Maraj’s counsel requested, and
 28 was permitted, to have until October 14, 2019 to reconsider whether to produce

1 certain of the Taylor Documents. (Gierl Decl. ¶ 16) On October 14, 2019, Maraj’s
 2 counsel indicated that they did not have authorization to produce additional
 3 documents, necessitating this motion. (*Id.* ¶ 17)

4 **B. Maraj Had a Duty, But Failed,**
 5 **to Produce the Taylor Documents**

6 As discussed above, Maraj objects to producing the Taylor Documents solely
 7 on the basis of the purported work product doctrine. Maraj’s arguments in support
 8 of her objections do not withstand scrutiny. She should be compelled to produce
 9 the Taylor Documents immediately.

10 “The work-product rule is not a privilege but a qualified immunity protecting
 11 from discovery documents and tangible things prepared by a party or his
 12 representative in anticipation of litigation.” *Admiral Ins. v. U.S. Dist. Ct. for Dist.*
 13 *of Arizona*, 881 F.2d 1486, 1494 (9th Cir. 1989) (citing Fed. R. Civ. P. 26(b)(3)).
 14 The work product doctrine only “guard[s] against the divulging of attorney’s
 15 strategies and legal impressions[;] it does not protect facts concerning the creation
 16 of work product or *facts contained within the work product.*” *Garcia v. City of El*
 17 *Centro*, 214 F.R.D. 587, 591 (S.D. Cal. 2003) (emphasis in original) (citations
 18 omitted). As the party asserting the work product doctrine, Maraj “bears the burden
 19 of proving that the material withheld meets the standards established for material to
 20 be classified as work product.” *Id.* As demonstrated below, Maraj cannot satisfy
 21 her burden.

22 As a threshold issue, Maraj’s failure to adequately identify the nature of the
 23 documents that she is withholding is prejudicial. Pursuant to Rule 26(b)(5) of
 24 Federal Rules, any party making a claim regarding work product protection must do
 25 so expressly, by describing “the nature of the documents, communications, or
 26 things not produced or disclosed in a manner that, without revealing information
 27 itself privileged or protected, will enable other parties to assess the applicability of
 28 the privilege or protection.” Fed. R. Civ. P. 26(b)(5). Maraj has not complied with

1 this obligation, and instead asserts only generally that all the Taylor Documents
 2 constitute attorney work product because they were purportedly made in connection
 3 with Maraj's efforts to obtain a declaration from Taylor.⁴ Based on Maraj's failure
 4 to adequately describe the nature of the documents she is withholding on the basis
 5 of the work product doctrine, Chapman is left to guess at the full scope and subject
 6 matter of the withheld Taylor Documents. Accordingly, and for the sake of clarity,
 7 the Taylor Documents include, and Chapman seeks production of, (1)
 8 communications, including text messages, between Maraj and Taylor concerning
 9 the underlying facts regarding how Taylor obtained a copy of the Infringing Work;
 10 (2) communications, including text messages, between Maraj and Taylor
 11 concerning the execution of a declaration by Taylor regarding how he obtained the
 12 Infringing Work (the "Declaration"); (3) any drafts of the Declaration that Maraj or
 13 her attorneys sent to Taylor; and (4) the signed Declaration, if any. Substantively,
 14 Chapman anticipates that Maraj will attempt to satisfy her burden by relying on
 15 *Schoenmann*, 7 F. Supp. 3d at 1014 and the few factually inapposite cases cited
 16 therein. Maraj's efforts to satisfy her burden of proving that the Taylor Documents
 17 are work product fail for at least the following four reasons.

18 *First*, insofar as the Taylor Documents may include information, documents,
 19 and communications concerning the underlying facts of this case, Maraj cannot rely
 20 on the work product doctrine to provide blanket protection for all of the Taylor
 21 Documents. The law is clear that the work product doctrine "does not protect facts
 22 concerning the creation of work product or *facts contained within the work*
 23 *product.*" *Garcia*, 214 F.R.D. at 591 (emphasis in original) (citations omitted);
 24 *Infosystems, Inc. v. Ceridian Corp.*, 197 F.R.D. 303, 306 (E.D. Mich. 2000) ("[T]he
 25

26 ⁴ Maraj's failure to produce a privilege log adequately describing the withheld
 27 documents is sanctionable. *See Del Campo v. Am. Corrective Counseling Servs.,*
 28 *Inc.*, No. C-01-21151, 2007 WL 4287335, at *3 (N.D. Cal. Dec. 5, 2007) ("failure
 to produce an adequate privilege log can amount to a waiver of the privileges
 asserted").

1 work-product doctrine, like the attorney/client privilege, does not protect
 2 underlying facts from disclosure.”). As this Court has previously held, it is “[o]nly
 3 when a party seeking discovery attempts to ascertain facts, which inherently reveal
 4 the attorney’s mental impression, [that] the work product protection extend[s] to the
 5 underlying facts.”” *Madrigal v. Allstate Indem. Co.*, No. CV 14-4242 SS, 2015 WL
 6 12748277, at *10 (C.D. Cal. Nov. 5, 2015) (quoting *Garcia*, 214 F.R.D. at 591).
 7 Maraj has not made, and cannot make, any showing as to how her communications
 8 with Taylor concerning the facts of this case, and in particular how Taylor obtained
 9 the Infringing Work, could possibly reveal her attorneys’ mental impressions or
 10 legal strategy, or otherwise constitute work product.⁵ To the contrary, such
 11 communications could, among other things, constitute direct evidence of Maraj’s
 12 knowledge of how Taylor obtained the Infringing Work or Maraj’s knowledge of
 13 its distribution – *facts* that go to the heart of Chapman’s claim that Maraj willfully
 14 distributed the Infringing Work. Indeed, Maraj cannot insulate these obviously
 15 relevant and discoverable communications simply by claiming that they are work
 16 product because they may have been made in connection with Maraj’s efforts to
 17 obtain a declaration from Taylor. In short, any Taylor Documents that include
 18 documents or communications between Maraj and Taylor discussing facts
 19 concerning the means by which Taylor obtained a copy of the Infringing Work are,
 20 by definition, not work product, and must be produced.

21 *Second*, to the extent that the Taylor Documents also may include documents
 22 or communications directly pertaining to the Declaration (and *not* simply to the
 23 underlying facts of the case), those, too, must be produced because they are not
 24 work product. This Court has plainly held that “signed declarations from third
 25 party witnesses are not protected work product.” *Acosta v. Sw. Fuel Mgmt., Inc.*,

26 _____
 27 ⁵ Admittedly, because Maraj did not produce a privilege log, Chapman cannot
 28 meaningfully assess how many of such communications exist. To the extent Maraj
 argues that no such communications exist, Maraj should be required to submit all
 communications between her and Taylor to this Court for an in camera review.

1 No. CV 16-4547, 2018 WL 739425, at *3 (C.D. Cal. Feb. 2, 2018), *vacated in part*,
 2 2018 WL 2207997 (C.D. Cal. Feb. 20, 2018); *accord Ford Motor Co. v. Edgewood*
 3 *Props., Inc.*, 257 F.R.D. 418, 422–23 (D.N.J. 2009) (signed third party affidavit not
 4 protected because it contained “recitation of facts within the ken of the witness and
 5 d[id] not contain the mental impressions or legal theories of counsel”); *Kuhl v.*
 6 *Guitar Ctr. Stores, Inc.*, No. 07 C 0214, 2008 WL 5244570, at *6 (N.D. Ill. Dec. 6,
 7 2008) (“Because they do not contain any legal advice, litigation strategy, or
 8 confidential communications, this Court cannot determine how the signed
 9 Statements could be protected by the work product doctrine or any related
 10 privilege”); *Walker v. George Koch Sons, Inc.*, No. CIV. A. 2:07CV274, 2008 WL
 11 4371372, at *5 (S.D. Miss. Sept. 18, 2008) (collecting cases holding that witness
 12 affidavits should not be afforded work product protection); *Tuttle v. Tyco Elecs.*
 13 *Installation Servs.*, No. 2:06-cv-581, 2007 WL 4561530, at * 2 (S.D. Ohio Dec. 21,
 14 2007) (signed third party “[a]ffidavits are normally not protected by the work
 15 product doctrine”); *Schipp v. Gen’l Motors Corp.*, 457 F. Supp. 2d 917, 924 (E.D.
 16 Ark. 2006) (“any verbatim non-party witness statements are neither privileged nor
 17 work product and must be produced”) (citation omitted); *Dobbs v. Lamonts*
 18 *Apparel, Inc.*, 155 F.R.D. 650, 653 (D. Alaska Mar. 23, 1994) (signed third party
 19 affidavits not protected work product because “[w]hat counsel are entitled to protect
 20 is their work and their thoughts and their analysis of the case, not the knowledge
 21 possessed by third parties”).

22 Similarly, several cases have held that even *draft* third party declarations and
 23 communications regarding the same are not protected from disclosure under the
 24 work product doctrine because they contain statements of facts, rather than the
 25 protectable mental impressions or opinions of counsel. *See, e.g., F.D.I.C. v.*
 26 *Arrillaga-Torrens*, 212 F. Supp. 3d 312 (D.P.R. 2015) (third party affidavits are
 27 normally not work product because affidavit purports to be a statement of facts
 28 within the personal knowledge of the witness, and not an expression of opinion of

counsel); *In re JDS Uniphase Corp. Sec. Litig.*, No. C-02-1486, 2005 WL 6296194, at *2 (N.D. Cal. Sept. 23, 2005) (“E-mail messages from [a third party] witness to [party] counsel . . . must be produced because they are verbatim statements by the witness that reflect the witnesses’, not counsel’s, mental impressions”); *Infosystems, Inc.*, 197 F.R.D. at 306 (declining to afford work product protection to draft third party declarations because they “purport . . . to be a statement of facts within the personal knowledge of the *witness*, and not an expression of the opinion of counsel”); *Milwaukee Concrete Studios v. Greeley Ornamental Concrete Prods.*, 140 F.R.D. 373, 379 (E.D. Wis. 1991) (compelling production of third party draft affidavits and rejecting argument that drafts were work product because “interpos[ing] the work product doctrine because [party attorneys] put words in the mouths of those third-party affiants as part of its litigation strategy . . . misperceives the nature of the doctrine”). Here, although Maraj has failed to produce a privilege log setting forth the basis of her invocation of the attorney work product doctrine, the parties agree that the Taylor Documents also include communications with Taylor concerning the Declaration, drafts of the Declaration, and the Declaration itself. However, Maraj has made no showing that any of these documents contain mental impressions or expressions of counsel, rather than simply the underlying facts of the case. For this additional reason, none of the Taylor Documents constitute protectable work product.

Maraj’s reliance on *Schoenmann*, a nonbinding Northern District of California case, for the contrary proposition is misplaced. In *Schoenmann*, plaintiff objected to, and a subpoenaed third party withheld, documents and communications concerning an unsigned declaration drafted by plaintiff’s attorneys, arguing that the documents sought were protected work product. 7 F. Supp. 3d at 1014. There, unlike here, the third party was a former employee of plaintiff, who was asked by plaintiff and plaintiff’s attorneys to sign the declaration. *Id.* at 1012. The *Schoenmann* plaintiff asserted that messages between plaintiff or its counsel and the

1 third party and the draft declaration were protected work product. *Id.* The
 2 defendant disagreed, arguing that plaintiff had waived the protection by
 3 communicating with and sending the draft declaration to the third party, and that
 4 defendant nevertheless had a substantial need for the documents because it needed
 5 to test the third party's credibility in order to prepare its case. *Id.* at 1012-14.
 6 Without much in the way of substantive analysis, the court relied on a handful of
 7 district court decisions to find that the documents and communications were
 8 protected work product. *Id.* at 1014. However, in so holding, the court specifically
 9 held that the defendant had "not demonstrated a substantial need sufficient to vitiate
 10 the protection afforded to the materials as work product" because the defendant had
 11 had an opportunity to depose the third party and chose not to do so. *Id.* Many of
 12 the circumstances in *Schoenmann* are not present here. Indeed, in contrast to
 13 *Schoenmann*, (i) Taylor is a non-party with no stated employment relationship with
 14 Maraj, and (ii) as discussed on pages 40-41, *infra*, Chapman has a substantial need
 15 for the Taylor Documents that far outweighs the purported work product protection.
 16 Regardless, even *Schoenmann* recognized that the work product doctrine cannot
 17 preclude a party from "discovering any of the underlying factual information [the
 18 third party] may possess" that is "provided to [a party or its] attorney." 7 F. Supp.
 19 3d at 1016. In any event, with the exception of the aforementioned point,
 20 *Schoenmann* stands in direct contradiction to the many cases cited on pages 34-36
 21 above for the opposite proposition. Thus, *Schoenmann* has no impact on the issues
 22 before the Court here. For this additional reason, *all* of the Taylor Documents
 23 should be produced.

24 *Third*, even if the work product doctrine protected some or all of the Taylor
 25 Documents from production, and it does not, they nevertheless must be produced
 26 because Maraj and her counsel waived such protection when she testified regarding
 27 their contents without objection at her deposition. It is black letter law that "[t]he
 28 work product privilege is . . . waived 'with respect to matters covered in . . .

1 testimony.”” *Hernandez v. Tanninen*, 604 F.3d 1095, 1100 (9th Cir. 2010) (quoting
 2 *United States v. Nobles*, 422 U.S. 225, 239-40 (1975)); *see also Nestle USA, Inc. v.*
 3 *Crest Foods, Inc.*, No. CV 16-07519, 2018 WL 7507426, at *2 (C.D. Cal. May 3,
 4 2018) (holding that party could not claim that certain terms of otherwise protected
 5 agreement should be “protected as work product because [the party] allowed [the
 6 witness] to testify to the terms of the agreement that she could recall” at her
 7 deposition). To the extent Maraj had the right to rely on the work product doctrine
 8 to withhold the Taylor Documents, she inarguably waived that right when she
 9 testified as follows:

10 Q. Have you ever texted with [Taylor]?

11 A. Yes.

12 Q. When was the last time you texted him?

13 A. About a day or two ago.

14 Q. What about?

15 A. This case.

16 Q. What did you say to him?

17 A. I don’t remember exactly.

18 Q. Generally?

19 A. Generally, I told him that there is a document that we
 20 want him to sign so that -- as proof that I didn’t give him
 21 this song in question. And he said that he would call me
 22 in 30 minutes, and I didn’t speak to him after that.

23 (Gierl Decl. ¶ 14, Exh. C (Maraj Deposition (“Maraj Dep.”) 22:22-23:10) Maraj
 24 continued:

25 Q. The conversation you had with [Taylor] regarding this
 26 document, was that a conversation you initiated, or is that
 27 a conversation he initiated?
 28

1 A. This last conversation that we had is -- I asked him:
 2 Hey, do you want us to -- I said: We can deliver the
 3 document if it's a problem. And then prior to that our
 4 conversation was me telling him: Hey, my lawyer has a
 5 document that you can sign so -- as proof that I didn't
 6 send you the song. And I texted the document to him.

7 . . .

8 Q. And to your knowledge, has he signed it?

9 A. I'm not positive.

10 Q. Have you seen the document?

11 A. I don't -- not physically, but I -- I texted it to him. So I
 12 saw, like, the PDF cover, but I didn't see it yet.

13 (Maraj Dep. 25:22-26:21) Finally, in response to questions regarding tweets in
 14 which Taylor stated that "Nicki gave me something @NickiMinaj, featuring @Nas.
 15 Not on her album" (*i.e.*, the Infringing Work), Maraj testified:

16 Q. During this call, what did you say to [Taylor] about
 17 these tweets?

18 A. Not about these specific tweets. But I was talking to
 19 him about the document. And he advised me that he
 20 already made it clear that he -- that he didn't receive this
 21 song from me, and that he was going to state that on the
 22 document that we sent him. And he said that he -- he
 23 actually -- we mentioned the wording of "Nicki gave me
 24 something," and he said that he made that clear to
 25 everyone who had asked him already, that that's his
 26 figure of speech. Because I was, like, that's not good for
 27 you to have put that in a tweet if I didn't give you
 28 something. But he said he clarified it. So I don't know if
 it was to Tracy Chapman's legal team or to my legal
 team, but he said he clarified that wording.

Q. Did he say anything else about that?

A. Not that I recall.

1 Q. What did you say to him in response, if anything?

2 A. I don't remember my specific response.

3 Q. Generally, do you recall what your -- how you
4 responded?

5 A. For him to fill out -- to make sure he signs the
6 document that I sent him, and he said he would.

7 (Maraj Dep. 73:15-74:18) Maraj's counsel did not object to a single one of the
8 reprinted questions -- or any question posed at Maraj's deposition -- or instruct her
9 not to answer on the basis of work product. To the contrary, Maraj's counsel stated
10 on the record:

11 Q. So there are text messages with [Taylor]?

12 Mr. Ross: She's testified about that. She said she
13 forwarded the document to him by text.

14 Mr. Jacobs: Okay. Which we don't have.

15 Mr. Ross: Which you do not have.

16 Mr. Jacobs: Okay. So I would like to get those. I would
17 like to get everything with [Taylor].

18 Mr. Ross: We can provide that.

19
20 (Maraj Dep. 86:22-87:4) Based on this testimony and exchange between counsel,
21 Maraj waived any asserted work product protection as to communications that were
22 the subjects of her testimony -- namely communications regarding how Taylor
23 obtained the Infringing Work and the circumstances surrounding his signing a
24 declaration stating that he did not obtain the infringing work from Maraj. *See*
25 *Hernandez*, 604 F.3d at 1100; *see also Nestle USA, Inc.*, 2018 WL 7507426, at *2.

26 *Fourth*, Chapman's substantial need for the Taylor Documents outweighs
27 any purported qualified work product protection. As discussed above, the Taylor
28

Documents go to the heart of this dispute, because they may reveal, among other things, (i) that Maraj provided the Infringing Work to Taylor; (ii) the identity of who provided the work to Taylor, if not Maraj; (iii) that Maraj knew the identity of the person who provided the infringing work to Taylor; and/or (iv) that Maraj knew that Taylor would distribute the work prior to his playing it on his radio show. This substantial need for documents is a far cry from the supposed substantial need to test the third party's credibility in *Schoenmann* that the court found to be insufficient. *See* 7 F. Supp. 3d at 1014. Absent relief by this Court, Chapman will not be able to obtain these crucial statements by Maraj and Taylor that potentially bear directly on Maraj's willful infringement of Chapman's copyright. Moreover, Chapman's need for the requested documents and communications is made more dire by Maraj's representation that she intends to file an early motion for summary judgment in the coming weeks, possibly before Chapman can depose Taylor.

Based on the foregoing, this Court should find that none of the Taylor Documents are protected work product. To the extent that any of the documents or communications would have otherwise been afforded qualified work product protection, Maraj waived such protection when she testified to the contents of the documents and communications and Chapman has a substantial need that outweighs any asserted work product claim. This Court should require Maraj to produce these documents and communications within 24 hours of its ruling on this motion to avoid any further prejudice to Chapman.

C. Maraj Had a Duty, But Failed, to Produce Roberson's Documents Because She Had Legal Control Over Them

In addition to improperly withholding the Taylor Documents, Maraj has refused to produce, and indeed, did not even attempt to collect, the Roberson Documents. (Gierl Decl. ¶¶ 16-17) This, too, was improper and unfairly prejudicial to Chapman. For the reasons discussed below, Maraj should be compelled to produce the Roberson Documents forthwith.

1 Rule 34 provides that a party may serve a request for production of any
 2 documents relevant to the litigation “in the responding party’s possession, custody
 3 or control.” *MGA Entm’t, Inc. v. Nat’l Prod. Ltd.*, No. CV 10-07083 JAK (SSx),
 4 2012 WL 182158, at *6 (C.D. Cal. Jan. 23, 2012) (quoting Fed. R. Civ. P. 34(a)).
 5 “The phrase ‘possession, custody or control’ is in the disjunctive and only one of
 6 the numerated requirements need be met.” *Id.* (citation omitted). As is relevant
 7 here, “[c]ontrol is defined as the legal right to obtain documents on demand.” *Id.*
 8 (quoting *United States v. Int’l Union of Petroleum & Indus. Workers*, 870 F.2d
 9 1450, 1452 (9th Cir. 1989)). “It is well settled that ‘a party need not have actual
 10 possession of documents to be deemed in control of them.’” *Id.* (citations omitted).
 11 Although documents could be in the “physical possession of a third party,” that fact
 12 “does not eliminate the responsibility of a responding party to search for and
 13 produce those documents when the party has the *legal right* to obtain the
 14 documents on demand.” *Id.* (emphasis added). Whether a party has a “legal right”
 15 to obtain documents “is evaluated in the context of the facts of each case.” *Id.*
 16 (quoting *Allen v. Woodford*, No. CV-F-05-1104, 2007 WL 309945 at *2 (E.D. Cal.
 17 Jan. 30, 2007)). However, “[c]entral to each case is the relationship between the
 18 party and the person or entity having actual possession of the document.” *Id.* If the
 19 party “can order the person or entity in actual possession of the documents to
 20 release them,” then the party has the “legal right” to obtain – and must produce –
 21 the documents in the third party’s possession. *Id.* “This position of control is
 22 usually the result of statute, affiliation or employment.” *Id.* “Control may be
 23 established by the existence of a principal-agent relationship.” *Id.* Here, Maraj
 24 indisputably had the legal right to obtain the Roberson Documents, and should be
 25 compelled to produce them, for the following reasons.

26 *First*, although Maraj generally and vaguely objected to producing any
 27 documents not within her possession, custody or control, that objection does not
 28 excuse her from producing the Roberson Documents because Roberson was her

1 agent during the relevant time period of this action. Indeed, Maraj does not appear
 2 to dispute that, at the time of allegedly infringing acts in this case, and during a
 3 majority of this litigation, Roberson was acting as Maraj's agent "with authority to
 4 bind" Maraj. *MGA Entm't, Inc.*, 2012 WL 182158, at *7. Accordingly, she has
 5 "the legal right to obtain documents on demand" from Roberson and thus, had "an
 6 obligation to collect and produce documents held by [Roberson] that are responsive
 7 to [Chapman's] requests for production." *See id.*

8 *Second*, although Maraj retorts that Roberson is no longer her agent, and that
 9 Chapman therefore has the same ability to obtain the Roberson Documents that
 10 Maraj does, Maraj's approach is an oversimplification that ignores the law. Indeed,
 11 Maraj offers no explanation as to why termination of her relationship with
 12 Roberson somehow negates her legal right, **and obligation**, to demand documents
 13 and communications that are in his possession and were created at a time when
 14 Roberson was Maraj's agent, and nor can she. *See Bank of New York v. Meridien*
 15 *BIAO Bank Tanzania Ltd.*, 171 F.R.D. 135, 154 (S.D.N.Y. 1997) (documents in
 16 possession of party's former auditors were deemed in "control" of party under
 17 "legal right" theory). Accordingly, this Court should require Maraj to obtain and
 18 produce the Roberson Documents.

19 *Third*, the prejudice to Chapman caused by Maraj's failure to produce the
 20 Roberson Documents, notwithstanding her obligation to do so, cannot be cured
 21 simply by propounding third party subpoenas on Roberson.⁶ As set forth above,
 22 Maraj had a duty to produce the Roberson Documents in advance of her deposition
 23 so that she could be questioned on them. She failed to do so, and Chapman was
 24 forced to conduct an incomplete deposition.⁷ This, in and of itself, is highly

25 ⁶ Regardless, Chapman has spent the time and money to propound a deposition
 26 subpoena on Roberson, and a document subpoena on The Blueprint Group. (*See*
 27 *Gierl Decl.* ¶¶ 18-19)

28 ⁷ Maraj also failed to produce several additional documents at her deposition that
 further unfairly prejudiced Chapman. For example, she did not, but had an
 obligation to, produce, (1) documents and communications concerning the creation

1 prejudicial, as it precluded Chapman from seeking and obtaining all of the
 2 discoverable facts concerning this dispute. Additionally, there is no guarantee that
 3 Roberson or his company will produce any relevant documents. In fact, it is very
 4 possible that Roberson might claim that he is precluded from producing certain
 5 documents without authorization from Maraj based on their former agency
 6 relationship, or assert other objections. This would only further delay the receipt of
 7 documents and communications that Chapman had a right to obtain from Maraj in
 8 the first place and compound the prejudice to Chapman. With discovery deadlines
 9 quickly approaching, this Court should order Maraj to collect the requested
 10 documents from Roberson and produce them immediately.

11 For all of the foregoing reasons, Chapman respectfully requests that the
 12 Court enter an Order granting Chapman's motion to compel and requiring Maraj to
 13 produce the Disputed Documents within 24 hours of the Court's ruling on
 14 Chapman's motion to compel.

15 **V. MARAJ'S POINTS AND AUTHORITIES IN**
 16 **OPPOSITION TO MOTION TO COMPEL**

17 Much of what Chapman represents hereinabove is legally and factually
 18 inaccurate. Despite her assertions to the contrary, Maraj timely responded to the
 19 requests for production at issue, and she is obligated to produce neither the
 20 Roberson Documents nor the Taylor Documents.

21 of the Infringing Work, including, without limitation, written compositions, sheet
 22 music, lyric sheets, demo and other preparatory recordings, and final recordings
 23 (Requests 22, 23, 24, 25, 26, 39, 62, 63, 65, 66, 67); (2) copies of any and all
 24 versions of the Infringing Work, including any "clean" versions of the Infringing
 25 Work (MINAJ000001), any versions of the Infringing Work with or without the
 26 "Sample" (MINAJ000015), the "mix" (MINAJ000032), and the document or
 27 material previously available on the WeTransfer link Maraj texted to Nas
 28 (MINAJ000033) (Requests 2, 5, 23, 24, 62, 63, 65, 66); (3) documents concerning
 the investigation into the supposed leak of the Infringing Work about which
 Maraj testified (Requests 2, 5, 59, 62, 64, 65, 66, 67); and (4) Documents and
 communications concerning the requests to license the Composition, including, but
 not limited to, those that include Maraj and/or her former management (Requests 1,
 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 17, 24, 25, 27, 28, 30, 31, 33, 58, 59, 60, 61,
 64, 65, 66, 67).

A. Maraj Timely Responded to the Requests for Production

Chapman is either mistaken or intentionally seeking to deceive the court for her gain in representing that Maraj did not respond substantively to the requests for production propounded upon her until September. Because no verification was required in connection with those requests, Maraj's counsel's inability to reach her at the time responses were due did not prevent them from providing substantive responses and objections. And as is reflected by the fact that Maraj's initial and supplemental responses set forth in section III hereinabove are identical in almost every instance, they did just that. The Court should not be fooled by the false and inflammatory narrative Chapman offers in support of her motion, and should not allow it to color its evaluation of this motion.

B. The Roberson Documents Are Not in Maraj's Possession, Custody, or Control

During the October 7 discovery conference, the Court indicated that while its hunch was that Maraj could be deemed to be in possession of documents held by Roberson under the Ninth Circuit's legal control test, the issue was notoriously dicey and often surprising. Declaration of Eric Lauritsen ("Lauritsen Decl.") at ¶ 2. Given that reality, the Court asked whether Chapman would be willing to skirt this issue by simply subpoenaing the documents she sought from Mr. Roberson and his company, The Blueprint Group, LLC. *Id.* After privately conferring for a moment, counsel for Chapman indicated it would do just that. *Id.* Four days later, counsel for Maraj received notice of the impending service of a subpoena on The Blueprint Group, LLC. *Id.* Apart from meeting and conferring via email to discuss concerns related to attorney-client privilege, Maraj has not objected to or hindered in any way Chapman's efforts surrounding that subpoena. *Id.* ¶ 3. Under these circumstances, Maraj is surprised and disappointed to find this issue briefed by Chapman herein essentially in contravention of the resolution agreed upon at the October 7 conference. Indeed, it is hard to see the parties' briefing on this issue as

1 anything other than a waste of resources given that the agreed upon alternative,
 2 which Chapman has indeed pursued, should produce the very Roberson Documents
 3 that Chapman is now needlessly and superfluously doubling down on her efforts to
 4 obtain from Maraj as well. *See generally U.S. v. Int'l Union of Petroleum & Indus.*
 5 *Workers, AFL-CIO*, 870 F.2d 1450, 1454 (9th Cir. 1989) (“Finally, the [moving
 6 party] can obtain the records it seeks directly from the local unions. The [opposing
 7 party] produced all subpoenaed documents in its actual possession or control, and
 8 even suggested to [the moving party] that it could obtain the others directly from
 9 the locals. Yet the [moving party] never asked the locals for these records.”)

10 That said, Chapman’s theory appears to be that Roberson was Maraj’s agent,
 11 and she states that Maraj “does not appear to dispute that” Roberson was her agent
 12 with the ability to bind her to contracts. Maraj does not in fact concede that point,
 13 however, and notes that Chapman has presented no evidence whatsoever that would
 14 meet her burden of establishing it. *See Int'l Union of Petroleum & Indus. Workers,*
 15 *AFL-CIO*, 870 F.2d at 1452 (9th Cir. 1989) (“The party seeking production of the
 16 documents . . . bears the burden of proving that the opposing party has such
 17 control.”)

18 Moreover, even if Roberson were Maraj’s agent, Chapman is misguided in
 19 emphasizing the existence of that relationship at the time of the facts underlying
 20 this lawsuit, or even the first several months that it was progressing. Despite
 21 Chapman’s arguments to the contrary, the relevant moment of inquiry is the date
 22 upon which the requests were served. *See Maria Del Socorro Quintero Perez, CY*
 23 *v. U.S.* , No. 12-civ-1417-WQH, 2016 WL 705904 at *3 (S.D. Cal. Feb. 23, 2016)
 24 (distinguishing cases regarding former employees’ possession, custody, or control
 25 over employers’ documents depending on whether applicable requests were
 26 received by employees before or after retirement). This rule makes intuitive sense,
 27 of course, since it is not clear what documents an opposing party will request until
 28 those requests actually arrive, and there is no duty to *collect* (as opposed to

1 preserve) documents simply because a case is filed. Here, Maraj first received the
2 requests for production at issue when they arrived via mail on May 30, 2019.
3 Lauritsen Decl. at ¶ 4. She testified in her September deposition that her
4 professional relationship with Roberson had ended “a few months ago.” *Id.* at ¶ 5.
5 In light of this testimony, Chapman is once again unable to meet her burden of
6 establishing that the relationship was ongoing at the relevant time—the time at
7 which the requests were received.

8 Finally, the theories Chapman describes as to how she will be prejudiced by
9 the denial of her requests as to Roberson do not withstand scrutiny. For one thing,
10 she cites a wholly unfounded fear that Roberson or Blueprint will shirk their
11 obligations under the subpoena, suggesting that they may be motivated to do so by
12 a belief that, because their possession of the documents derives from services as
13 Maraj’s agent, they could not produce the documents without Maraj’s consent.
14 Chapman has provided nothing to indicate that in the event Roberson or Blueprint
15 took this unusual legal position—a possibility that seems extremely remote in the
16 first place—Maraj would withhold her consent. For another thing, she suggests she
17 has *already* suffered prejudice because she was unable to review the Roberson
18 documents before Maraj’s deposition. First, seventeen days passed between
19 Maraj’s document production and her deposition. This interval provided ample
20 opportunity for Chapman to recognize that the Roberson Documents were not
21 included in Maraj’s production and raise the issue with Maraj in advance, and even
22 serve a third party subpoena on Roberson with a production date before the
23 deposition if need be. More fundamentally, however, even to the extent Chapman
24 was unavoidably prejudiced in the way she describes, that ship has sailed and will
25 not be corrected by the order she now seeks.

26 At bottom, Chapman’s request with respect to the Roberson Documents
27 constitutes a needless waste of the Court’s and parties’ resources and should be
28 denied.

1 C. The Taylor Documents Are Protected Work Product

2 With respect to the Taylor Documents, Chapman emphasizes that parties
3 cannot claim work product protection over facts. In claiming that the Taylor
4 Documents are protected work product, Maraj is not doing so. Indeed, Maraj
5 invites Chapman to ask Taylor all about the facts surrounding the topics discussed
6 in the Taylor Documents—topics which are known to Chapman as a result of
7 Maraj’s deposition testimony—at Taylor’s upcoming deposition. But work product
8 rules prohibit Chapman from learning those facts by reviewing Taylor’s
9 communications with Maraj or her counsel as part of Maraj’s defense in this action.

10 Chapman’s emphasis on the distinction between facts and mental
11 impressions, and that of the non-binding cases she cites focusing on this distinction,
12 quite simply reflects a misunderstanding of the fundamental principles of the work
13 product doctrine. This misunderstanding is explored in *Mitchell v. Archer Daniels*
14 *Midland Co.*, 329 F.R.D. 178, 181 (S.D. Tenn. 2019), where the court points out
15 that cases focusing on the distinction are incompatible with the very language of
16 Rule 26(b)(3) of the Federal Rules of Civil Procedure, the ostensible codification of
17 the work product doctrine. Basing its analysis off of the literal wording of that
18 Rule, the court instead asks simply whether the materials at issue were “trial
19 preparation materials,” noting that “the discoverability of *trial preparation*
20 *materials* does not turn upon the degree to which those materials reflect attorneys’
21 mental impressions.” *Id.* (emphasis in original). The court explained that when the
22 answer to that question is affirmative, the Rule next requires analysis as to whether
23 the materials are otherwise discoverable, and whether the requesting party has a
24 substantial need for them. *Id.* However, the “substantial need” question does not
25 turn upon how relevant the materials in question are to the action, as Chapman
26 appears to believe when she emphasizes the materiality of the facts she thinks they
27 would reveal. Instead, the *Mitchell* opinion makes clear that the question relates to
28

1 availability of witnesses. *Id* at 182-83 (“Defendants have not claimed—much less
 2 demonstrated—that the witnesses interviewed by Plaintiff’s investigator are not
 3 equally accessible to Defendants. There is no suggestion that any of these witnesses
 4 has died or left the area for parts unknown. In other words, Defendants have not
 5 shown that they would face some undue hardship if they were forced to obtain the
 6 information sought via some method other than requiring Plaintiff to produce the
 7 audio recordings of the witness interviews.”).

8 Here, Chapman defines the Taylor Documents as Maraj’s communications
 9 with Taylor concerning his signing a declaration. These are fundamentally and
 10 undeniably “trial preparation materials” as discussed in Rule 26(b)(3). Maraj does
 11 not dispute that the substance of the communications are relevant to the case and
 12 otherwise discoverable, but vehemently disputes that Chapman has a “substantial
 13 need” to access them given that Taylor has been subpoenaed and is, by all accounts,
 14 preparing to appear at a November 22 deposition. Indeed, if mere materiality of the
 15 topics discussed could establish a substantial need, the exception would swallow
 16 the rule; the only things that could be protected work product would be
 17 communications irrelevant to a case. That is simply not the law.

18 Chapman challenges Maraj’s anticipated reliance on *Schoenmann v. F.D.I.C.*,
 19 7 F. Supp. 3d 1009 (N.D. Cal. 2014), and attempts to distinguish the case on the
 20 dubious grounds that there, unlike here, the third party witness involved in the
 21 communications was a former employee of a party. It is not clear how that fact
 22 would render any difference in the analysis, and Chapman does not elaborate.
 23 *Schoenmann*’s status as persuasive authority from a sister district thus appears to be
 24 at least as valid as that of any of the foreign authorities Chapman herself relies
 25 upon. In any event, Chapman does not appear to argue that the work product
 26 protections that may have applied to the Taylor Documents, including the alleged
 27 declaration, were waived by disclosure to him as a non-party, which was the central
 28 matter at issue in *Schoenmann*. The case is also relevant, however, as a response to

Chapman’s assertions regarding the work product status of declarations, both in draft and final form. *Schoenmann* and the authorities cited therein clearly favor the conclusion that these communications are indeed work product. *See, e.g.*, Wright & Miller, Federal Practice & Procedure § 2024 n. 24 (“Recent cases have generally held that draft affidavits, and communications with counsel relating to affidavits, are covered by the work-product rule.”); *citing Randleman v. Fidelity Nat. Title Ins. Co.*, 251 F.R.D. 281 (N.D. Ohio 2008). Importantly, however, the communications need not involve “counsel” directly. *See* Fed. R. Civ. Proc. 26(b)(3) (affording work product protection to “documents and tangible things that are prepared in anticipation of litigation or for trial by or for *a party* or its representative”) (emphasis added); *see also Adams v. City of Montgomery*, 282 F.R.D. 627, (M.D. Ala. 2012) (fact that report was drafted by non-lawyer did not defeat work product protection). With respect to the supposed distinction between signed and unsigned declarations, *Intel Corp. v. VIA Technologies, Inc.*, 204 F.R.D. 450, 452 (N.D. Cal. 2001) is instructive, where the court stated that the declaration at issue therein “was clearly work product right up until the moment it was filed.” Ultimately, rather than positing supposed distinguishing factors that do not stand up to scrutiny, Maraj acknowledges that there are contrary authorities regarding the work product status of declarations as they may exist at various states of their development. But in view of the plain language of Rule 26(b)(3) and the fundamental tenets of work product protection, the cases on *Schoenmann*’s side of the question are far better reasoned.

Finally, with respect to Chapman’s charges of waiver, the Maraj testimony that Chapman cites describes the nature of her communications with Taylor in a very general way—in a manner commensurate with what would go into a privilege log. That is, they identify who the parties were to the communications, when the communications occurred, via what means, and the general topics discussed. The testimony does not quote from the communications or the document discussed

1 therein. Indeed, it would be impossible for Maraj to quote from that document, as
 2 the very testimony Chapman cites indicates that Maraj herself had not even
 3 reviewed it. For this reason, Chapman's observation that Maraj's counsel did not
 4 object to the questioning or testimony in response thereto is misplaced. So are
 5 Chapman's arguments with respect to Maraj's counsel's non-committal statement
 6 "We can provide that." Even to the extent this statement reflected a commitment to
 7 produce the communications and a momentary waiver the work product protection
 8 to which they were entitled, under Rule 502(b) of the Federal Rules of Evidence,
 9 the communications regained their protected status when Maraj thereafter took
 10 prompt and reasonable steps to correct the error and prevent disclosure. Indeed,
 11 Rule 26(b)(5)(B) contemplates the ability to subsequently reclaim work product
 12 protection after protected documents are actually *produced*. Here, Maraj's
 13 objections were communicated to Chapman just one week after Maraj's deposition,
 14 and before any protected documents were in fact divulged. As such, Maraj was
 15 well within her rights to reclaim the protections to which the communications are
 16 entitled.

17 As a result of the foregoing, as with the Roberson Documents, Chapman's
 18 motion should be denied with respect to the Taylor Documents as well.

19 Dated: October 29, 2019

Respectfully submitted,

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7
8 **LOCAL RULE 5-4.3.4(a)(i) CERTIFICATION**

9 The filer of this document attests that all other signatories listed above on whose
10 behalf this filing is submitted concur in the filing's contents and have authorized
11 the filing.